

The Salisbury Planning Board held its regular meeting on Tuesday, February 22, 2005 in the City Council Chamber of the Salisbury City Hall at 4:00 p.m. with the following being present and absent:

PRESENT: Len Clark, Lou Manning, Brian Miller, Rodney Queen, Sandy Reitz, Jeff Smith, Valerie Stewart, Albert Stout, Rev. Jerry Wilkes and Diane Young

ABSENT: Mitzi Clement and Dr. James Johnson have both submitted resignations

STAFF: Janet Gapen, Dan Mikkelson, Preston Mitchell, Diana Moghrabi, Joe Morris, David Phillips, and Lynn Raker

The meeting was called to order by Co-Chairman **Jeff Smith**. Co-Chairman Smith offered a moment of silence. The minutes of the February 8, 2005 meeting were approved as published.

TEXT AMENDMENT

Code of Ordinances Text Amendment, Sec 19-28 – Planning Board Composition; appointment of members; term of office

This is a text amendment to the city's code; city attorney Rivers Lawther assisted in its preparation. This text amendment is being initiated pursuant to the upcoming annual appointments and re-appointments to the Planning Board by the City Council.

Section 19-28 of the City Code of Ordinances currently requires that nine (9) of the Planning Board members come from within the city limits and three (3) come from the Extraterritorial Jurisdiction (ETJ). This requirement was questioned by the City Attorney because the North Carolina General Statutes were recently revised with regard to ETJ representation. The Statutes now require that any city electing to exercise an ETJ should have at least one (1) ETJ member and *“an additional member must be appointed to the planning agency or board of adjustment to achieve proportional representation only when the population of the entire extraterritorial zoning and subdivision area constitutes a full fraction of the municipality's population divided by the total membership of the planning agency or board of adjustment.”*

Pursuant to these revised requirements, to the current city population, and to the current ETJ population, the Salisbury Planning Board needs to have two (2) ETJ members.

This text amendment simply updates the City Code by inserting current statutory language and removing specific representation numbers.

The recommendation from staff is to change Article II. Planning Board to read:

- (a) The Planning Board shall be composed of (12) members. In accordance with G.S. 160A-362, the total membership of the Planning Board shall be proportional to the population of residents of the City of Salisbury and residents in the Extraterritorial Jurisdiction (ETJ) area. City members shall be appointed by the City Council and ETJ members shall be appointed by the County Board of Commissioners at the request of the City Council or as provided by law.

Rodney Queen made a motion to make the above recommendation to City Council. Lou Manning seconded the motion with all members voting AYE.

ZONING MAP AMENDMENT

Z-02-05	Wal-Mart Stores East South Arlington Street Salisbury, NC
LOCATION:	South side of South Arlington Street between Old Concord and East Innes Streets
From:	M-1 & B-4
To:	B-6
Parcel:	Map 059A, parcel 001, 20.97 acres

Chairman Jeff Smith opened the Courtesy Hearing for Z-02-05. Preston Mitchell gave a staff presentation.

The Highway Business District is intended primarily for the location of commercial uses that depend upon high volumes of traffic or major thoroughfare location for their business trade.

The Light Industrial District is to provide areas for the location of wholesaling and industries for manufacturing, processing, and assembling parts and products, distribution of products at wholesale, transportation terminals, none of which will create smoke, fumes, noise, odor, dust or which will be detrimental to the health, safety, and general welfare of the community.

The General Business District is for the location of business for the retailing of merchandise and for carrying on professional and business services and limited wholesaling and manufacturing as well as places for public assembly. This is the zoning which is being requested by Wal-Mart. The petitioner has stated that they are requesting the B-6 district in order to apply for a Special Use Permit to allow for Outdoor Display.

Staff recognizes that the requested zone change is to allow for an existing non-conformity to come into a legal status. Currently, the Wal-Mart site is utilizing portions of the parking lot, side-yard buffering, and even the top of the I-85 retaining wall to store/display goods for sale. The City's Code Enforcement Officer has addressed Wal-Mart on this issue and recommended that they file for the zone change. Planning staff agrees with the suggestion, but recommends that the City Council, upon the approval and issuing of the Special Use Permit, restrict the display areas as called in the following recommendation; *Approve, and if the zone change is approved, recommend that City Council, upon hearing the request for a Special Use Permit to allow Outdoor Display, limit the display area to hard surface or parking area as well as limit the location of the display area between the Interstate and the store. In addition, staff recommends that City Council require that the display area be clearly defined from the adjacent parking spaces by using temporary landscaping or some other form of clear delineation.*

Those speaking in favor:

Sylvester Johnson, District Manager for Wal-Mart, 594 Leewood Run Court, Charlotte, 28269. Mr. Johnson extended courtesy to the Planning Board. He clarified that the store had been in the present location for two years and not placed merchandise on the retaining wall until recent months. They do not plan to use the terrain for display in the future. They do intend to use the parking lot. He stated that this store uses less than 2 percent of their parking for display and it has been clearly defined in the past. He also stated that the store has 4-5 parking spaces per every 1,000 square feet of the store. It came as a surprise to the store that they were in violation. Most of the seasonal merchandise was purchased at least 18 months ago, and it is on its way. He hoped that a temporary permit could be issued while the store was going through the process of coming into compliance.

Jeff Smith advised Mr. Johnson that the Planning Board had worked with Wal-Mart two years ago to draw the Special Use Permit for Outdoor Display. It was the hope of the Planning Board then to end up where they are now in regard to rezoning the property. (They had also hoped Lowes would rezone.)

Those speaking against: None

Board Discussion:

Jeff Smith stated that the Planning Board makes only recommendations to City Council based on the rezoning request and recommendations on the Special Use Permit. Therefore, a request for temporary relief would not come from the Planning Board. Wal-Mart could take that to City Council. **Jeff Smith** said the City would move the process along as quickly as possible for them.

Rodney Queen felt B-6 was the appropriate zoning for this property. **Diane Young** asked for more information about the loss of parking spaces during the outdoor display. **David Phillips** replied that they have to meet the required parking, but they can cover it during the seasonal display (it continues to exist under the display). They can use up to 10 percent of required parking. **Brian Miller** stated that this was the outcome Planning Board had desired in negotiating with the former store manager two years ago. Mr. Miller apologized for this being a two-step process and that Wal-Mart will have to return for the Special Use Permit. He thanked Wal-Mart for taking this step and made a motion to make a recommendation to Council to approve **Z-02-05** as submitted. **Albert Stout** seconded the motion with all members voting AYE.

COMMITTEE REPORTS

Legislative Committee A - Sign Ordinance (Special Events) – Brian Miller (chair), Jerry Wilkes, Lou Manning, Valerie Stewart, and Diane Young. **Brian Miller** reported that a presentation had been made before City Council. Councilmembers Kennedy and Woodson were appointed as a committee to determine how to address the special events signage issue. Staff is working on scheduling that meeting.

Legislative Committee B – Palm Readers and Spiritual Advisors: Len Clark, ch, Sandy Reitz, v. ch., Rodney Queen, James Johnson, and Albert Stout, Jr.

Preston Mitchell reported that the neighborhood involved with this case (Z-18-04) had requested clarification. The recreation and entertainment category is a future heading - if the new ordinance code is adopted.

“The committee concluded that, from a zoning perspective, there is no distinct difference between spiritual advisement and psychic advisor or fortune teller. With this in mind, it was agreed that this use would fall under the Recreation / Entertainment category of the Zoning Ordinance Use Table. The Professional Office category, although including uses that typically do not keep a stock of goods, is reserved for uses that are regulated by local, state, or federal licensing requirements.”

“However, it was also agreed by all members of the committee that the allowance of this use in the B-1 Office district still stands. Although this use falls under Recreation & Entertainment, it was agreed that this use is appropriate in the B-1 district because no goods are stocked for retailing, the customer / clientele is usually limited to a few individuals, and no retail-type visibility requirements are needed.”

Sandy Reitz preferred a district that allows for less signage. The visual impact of the business in a gateway to Salisbury is a concern of hers.

Brian Miller pointed out that batting cages and adult uses appear in the same classification and advised that it may need “cleaning up.” He is against putting this use in B-1 because he sees this location on East Innes Street as a “front door” to the city even though it is not in the gateway. Mr. Miller read from the Innes Street Gateway Plan, Article 15.03 and under Prohibited Uses listed “fortune tellers, palm readers, psychic advisors, astrologers, tarrot card readers and other related issues. He does not have a problem with allowing the use, just not in this vicinity.

Note: This property is located in a group development overlay. If the text amendment is approved, Mrs. Dalton will have to go through the group development process.

Jerry Wilkes reminded the Board that it has been a goal of Planning Board to “stick to standards.” This use is not found to be offensive to the B-1 District. The property that brought this issue to light is not located in the East Innes Street Gateway. An extension of the “Gateway” could be considered.

Rodney Queen made a motion to recommend a text amendment that would allow fortune tellers, palm readers, psychic advisors, astrologers, tarrot card readers and other related uses in B-1 zoning district. **Albert Stout** seconded the motion. The motion was passed (8-2). Diane Young and Brian Miller voted against the motion to recommend the text amendment.

COMMITTEE SCHEDULING

Committee 1

N. Main Small Area Study – Sandy Reitz, Chair, Lou Manning, V. Chair, Jeff Smith, and Albert Stout - **Preston Mitchell** advised the committee that a 15-passenger van had been reserved for a van tour of the neighborhood. Residents (homeowners and renters) in the N. Main neighborhood area will participate. **Albert Stout** suggested that the tour look at this area as a gateway to Salisbury. Wednesday, March 9 at 8:30 a.m. the committee will meet at City Hall for the tour.

OTHER BOARD BUSINESS

Other

Councilmember Mark Lewis addressed the issue of **G-09-03**, The Gables at Kepley Farm and valley curbing (Planning Board, February 8, 2005 - City Council February 15, 2005). He acknowledged that Planning Board made a anonymous recommendation to deny valley curbing, and City Council approved it. Planning Board's discussion had been based on equity and fairness. He assured Planning Board that Council received a "rehearsed" presentation that was different than that which Planning Board had received. Council's decision was based on an active adult community and the reason why valley curb is better than vertical curb.

Mr. Lewis recommends a public discussion about active adult communities. Define it. Put an overlay on it. Planning Board should now do what is necessary so anyone wanting to build an active adult community would have the same opportunity. A committee will have to make these determinations. Mr. Lewis looks forward to a recommendation, even if the recommendation is that "there is nothing we can do."

Board Members

Rodney Queen said that he did not recall the RDB standard resulting in vertical curbing as it came out of the original committee. Dan Mikkelson thought the reason vertical curbing was initiated in RDA and RDB was due to the narrow lots and because they were experimental zones. The major difference between RDA and RDB is the density.

Brian Miller would like to see the subdivision process extended since many subdivisions expire before they are able to build. He is requesting that Planning Board form a committee to address the issue. He made this suggestion in the form of a motion; Sandy Reitz seconded the motion.

Dan Mikkelson responded to Mr. Miller with an explanation of a vested right – the right to continue in accordance with an approved plan for an extended period of time. Vested rights at this time are allowed for a period of up to five years by state statutes. Our existing ordinances do not have anything relative to vested rights. The proposed ordinance is going to include statutory language that allows vested rights to be approved by City Council. It is going to specify that plans that are approved will be valid for a period of two years with an option of requesting a vested right that will allow up to five years.

Part of the justification of going to a new ordinance is because the old ordinance has so many things about it that need correcting, that the corrections should be made in the new ordinance. This way it will be easier to see the new ordinance as beneficial. It is more desirable to fix problems in the new ordinance rather than the old - particularly in regard to the burden on staff at this time.

Brian Miller and Sandy Reitz withdrew the motion. Jeff Smith invited Planning Board to attend the Land Development Ordinance Committee meetings to participate in the discussion and process.

Chairman

Dr. James Johnson submitted his resignation and his position will be filled, along with others, next month.

There will be a lecture on sustainable growth as part of the Clean Air series at the Center for the Environment at Catawba College following the Planning Board meeting. Nate Bowman will be the key speaker and a panel of local developers, Planning Board members, realtors and council members will discuss the topic afterward.

There being no further business to come before the Board, the meeting was adjourned.

Co-Chairman, Jeff Smith

Co-Chairman, Rodney Queen

Secretary, Diana Moghrabi